

UNITED STATES DISTRICT COURTS
1ST JUDICIAL CIRCUIT
1 COURTHOUSE SQUARE
BOSTON, MASSACHUSETTS

ORIGINAL COMPLAINT

PLAINTIFF

JOHN D. MILLER
16 LOVERS LANE
NEW LEBANON, NY 12125

DEFENDANTS
~~UNITED STATES OF AMERICA~~
VETERANS MEDICAL CENTER
JAMAICA PLAINS, MA
AND ITS EMPLOYEES
NANCY KIM, M.D.
NABEEL JARUDI, M.D.
STEVEN NESS, M.D.
EDWARD D. FLENBERG, M.D.
EDNAN AHMED, M.D.

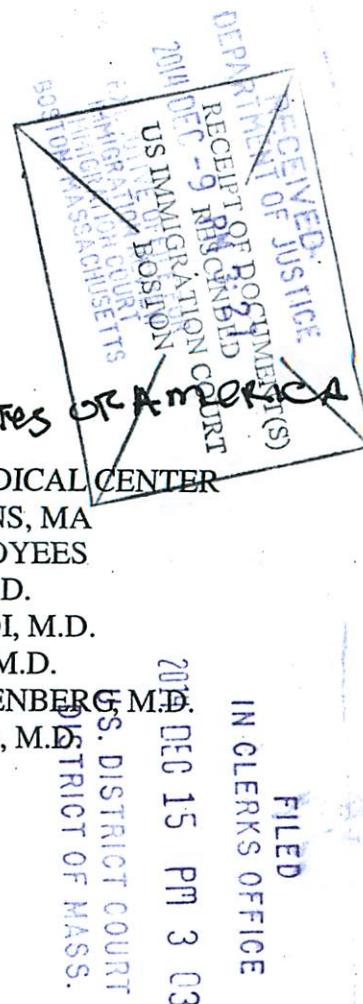
JURISDICTION

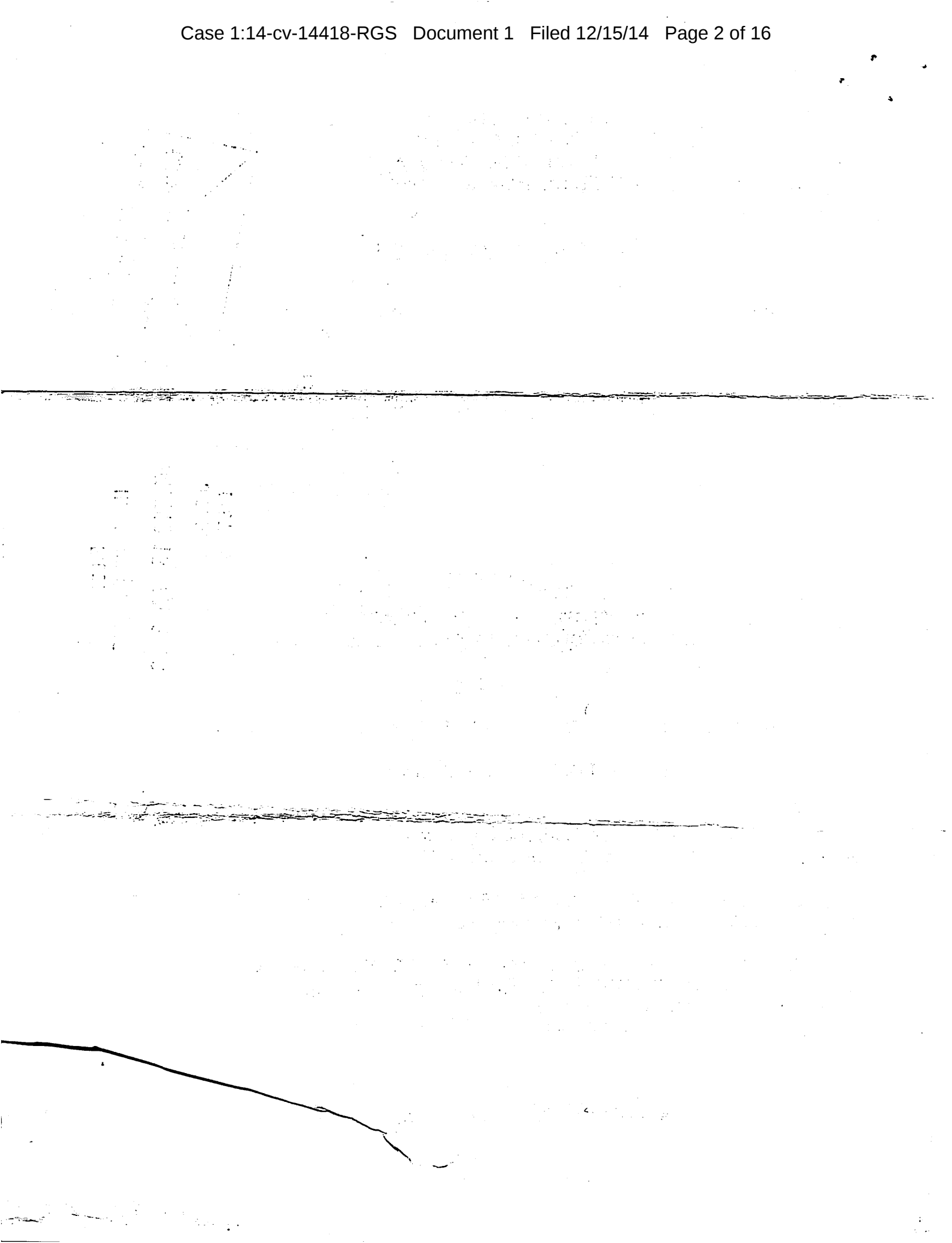
FEDERAL TORT CLAIMS ACT
TITLE 28 CODE OF FEDERAL REGULATIONS

FACTS

NOW COMES THE PLAINTIFF, JOHN D. MILLER, and states the following:

1. PLAINTIFF, JOHN D. MILLER, is a resident of the State of New York, in the United States of America.
2. PLAINTIFF, JOHN D. MILLER, is a Veteran of the United States Military and entitled to the use and enjoyment of any United States Veterans facility in the world.
3. DEFENDANT, VETERANS MEDICAL CENTER at JAMAICA PLAINS MASSACHUSETTS is a certified United States Veterans care facility.
4. DEFENDANTS, THE EMPLOYEES OF VETERANS MEDICAL CENTER at JAMAICA PLAINS MASSACHUSETTS are paid employees of the facility.





15. On or about July 15, 2007, PLAINTIFF, JOHN D. MILLER, underwent a procedure by DEFENDANTS, STEVEN NESS, M.D. and EDWARD D. FINEBERG, M.D. at DEFENDANT, VETERANS MEDICAL CENTER, in JAMAICA PLAINS MASSACHUSETTS, AND IT'S EMPLOYEES to reattach the retina of his right eye using a Nitrogen Gas Bubble.

16. This procedure was explained by DEFENDANTS, STEVEN NESS, M.D. and EDWARD D. FIENBERG, M.D., at DEFENDANT, VETERANS MEDICAL CENTER, in JAMAICA PLAINS MASSACHUSETTS, AND IT'S EMPLOYEES to "hold the retina in the correct position for recovery to take place".

17. The procedure on or about July 15, 2007, to reattach PLAINTIFF, JOHN D. MILLER's, retina performed by DEFENDANTS, STEVEN NESS, M.D. and EDWARD D. FIENBERG, M.D., at DEFENDANT, VETERANS MEDICAL CENTER, in JAMAICA PLAINS MASSACHUSETTS, AND IT'S EMPLOYEES failed and was rescheduled.

18. On or about August 21, 2007, PLAINTIFF, JOHN D. MILLER, underwent another procedure, performed by DEFENDANTS, STEVEN NESS, M.D. and EDWARD D. FIENBERG, M.D., at DEFENDANT, VETERANS MEDICAL CENTER, in JAMAICA PLAINS MASSACHUSETTS, AND IT'S EMPLOYEES to reattach his right retina.

19. This procedure was explained to consisted of a silicon oil being inserted into the posterior chamber of PLAINTIFF, JOHN D. MILLER's, right eye and a Schlera Buckle being sutured on the eye to retain its shape and to allow the retina to heal by DEFENDANTS, STEVEN NESS, M.D. and EDWARD D. FIENBERG, M.D., at DEFENDANT, VETERANS MEDICAL CENTER, in JAMAICA PLAINS MASSACHUSETTS, AND IT'S EMPLOYEES.

20. After the procedure was performed by DEFENDANTS, STEVEN NESS, M.D. and EDWARD D. FIENBERG, M.D., at DEFENDANT, VETERANS MEDICAL CENTER, in JAMAICA PLAINS MASSACHUSETTS, AND IT'S EMPLOYEES, PLAINTIFF, JOHN D. MILLER, suffered cloudiness of vision.

21. On or about July 15, 2008, PLAINTIFF, JOHN D. MILLER, saw DEFENDANT, EDNAN AHMED, M.D. at DEFENDANT, VETERANS MEDICAL CENTER, in JAMAICA PLAINS MASSACHUSETTS, AND IT'S EMPLOYEES, at which time DEFENDANT, EDNAN AHMED, M.D., removed silicon oil from the interior chamber of PLAINTIFF, JOHN D. MILLER's, right eye, placed there on or about August 21, 2007, by DEFENDANTS, STEVEN NESS, M.D. and EDWARD D. FIENBERG, M.D., at DEFENDANT, VETERANS MEDICAL CENTER, in JAMAICA PLAINS MASSACHUSETTS, AND IT'S EMPLOYEES.

22. On or about January 15, 2009, PLAINTIFF, JOHN D. MILLER, began suffering ruptures on the anterior surface of his right cornea which caused droplets of silicon to collect on his face. This condition continued for approximately three months.

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23. On or about November 16, 2009, PLAINTIFF. JOHN D. MILLER, sought the opinion of an Optometrist a Mark Burrell and Associates in Westfield Massachusetts. Please see Exhibit 1.

24. On or about November 16, 2009, PLAINTIVE. JOHN D. MILLER, was diagnosed as being blind in his right eye.

25. On or about November 11, 2011, a claim has been filed with the Office of General Consul in Washington, D.C. Please see Exhibit 2.

26. After receiving no communication from the Veterans Administration. PLAINTIFF filed the original complaint on or about November 15, 2012.

27. Upon issue of the Federal Complaint. the Veterans Administration responded and classified the complaint as a Federal Tort Action 220SC Action.

28. PLAINTIFF underwent the Internal Revenue process of the Veterans Administration, and received final denial on June 4, 2014.

CAUSES OF ACTION

01. On or about October 16, 2006, during a routine cataract removal procedure performed at DEFENDANT in VETERANS MEDICAL CENTER in JAMAICA PLAINS, MASSACHUSETTS, AND IT'S EMPLOYEES, DEFENDANT, NANCY KIM M.D., under the direct supervision of DEFENDANT, NABEEL JARUDI M.D., did cause a tear of the right the posterior surface of the rear membrane of the right eye pocket of PLAINTIFF, JOHN D. MILLER, rendering it useless to retain the lens.

02. On or about October 16, 2006, at DEFENDANT, VETERANS MEDICAL CENTER in JAMAICA PLAINS, MASSACHUSETTS, AND IT'S EMPLOYEES, DEFENDANT, NANCY KIM M.D., under the direct supervision of DEFENDANT, NABEEL JARUDI, M.D., had to preform an emergency procedure known as ECCEIACIOL to correct condition caused by the posterior surface of the rear membrane of PLAINTIFF, JOHN D. MILLER's right eye pocket which was caused by DEFENDANT, NANCY KIM M.D., under the direct supervision of DEFENDANT, NABEEL JARUBI, M.D.

03. On or about October 16, 2006, at DEFENDANT, VETERANS MEDICAL CENTER in JAMAICA PLAINS, MASSACHUSETTS, AND IT'S EMPLOYEES, DEFENDANT, NANCY KIM M.D., under the direct supervision of DEFENDANT, NABEEL JARUDI, M.D., failed to suture the tear created by NANCY KIM M.D.

04. Claimant suffered Retinal Detainment because of emergency inappropriate procedures and the Loss of intergrity between the Plaintiffs A.C. and P.C.

05. DR. stephen Ness and Edward Frenbure know or should have known of the Loss of 04. Claimant suffered Retinal Detainment because of emergency inappropriate procedures and the Loss of intergrity between the Plaintiffs A.C. and P.C.

05. DR. stephen Ness and Edward Frenbure know or should have known of the Loss of integrity between A.C. and P.C. therefore the procedure of using a gas bubble was totally ineffectual. The procedure caused claimant pain and suffering and was unsuccessful.

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06. Drs Ness and Ginsberg again committed egregious error in introducing silicone oil into Claimant's P.C. which promptly migrated to Claimant's A.C. through the tear original caused and not repaired by Drs. Kim and Jarubi said oil migrated to the space directly posterior of Claimant's cornea and began the destructive process to Claimant's cornea.

07. Drs Ednan and Ginsberg failed to completely remove the silicone oil from Claimant's eye. This oil after the final procedure was expelled from patient's eye through the cornea permanently scarring and destroying Claimant's cornea rendering blindness in the eye

between A.C. and P.C. therefore the procedure of using a gas bubble was totally ineffectual. The procedure caused claimant pain and suffering and was unsuccessful.

06. Drs Ness and Ginsberg again committed egregious error in introducing silicone oil into Claimant's P.C. which promptly migrated to Claimant's A.C. through the tear original caused and not repaired by Drs. Kim and Jarubi said oil migrated to the space directly posterior of Claimant's cornea and began the destructive process to Claimant's cornea.

07. Drs Edana and Ginsberg failed to completely remove the silicone oil from Claimant's eye. This oil after the final procedure was expelled from patient's eye through the cornea permanently scarring and destroying Claimant's cornea rendering blindness in the eye.

08. SUBSEQUENT TO THE PROCEDURE BY NANCY KIM PLAINTIFFS WAS SUBJECTED TO A CAMPAIGN OF SILENCE AND MISINFORMATION BY THE ABOVE NAMED DEFENDENTS AND OTHERS UNIDENTIFIED. THIS MALFEASANT ACTION CAUSED PLAINTIFF PAIN AND MENTAL SUFFERING.

RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF, JOHN D. MILLER, RESPECTFULLY PRAYS that:

1. DEFENDANT, VETERANS MEDICAL CENTER at JAMAICA PLAINS MASSACHUSETTS, be held responsible and liable for the actions and omissions of its employees and staff as they relate to all procedures performed on PLAINTIFF, JOHN D. MILLER at their facility.
2. DEFENDANT, NANCY KIM, M.D., be held responsible and liable for her negligent actions and omissions as they relate to the procedure performed on or about September 16, 2006, on PLAINTIFF, JOHN D. MILLER.
3. DEFENDANT, NABEEL JARUDI, M.D., be held responsible and liable for his negligent actions and omissions as they relate to the procedure performed on or about September 16, 2006, on PLAINTIFF, JOHN D. MILLER.
4. DEFENDANT, STEVEN NESS, M.D. be held responsible and liable for his negligent actions and omissions as they relate to the procedures performed on or about July 15, and August 21, 2007, on PLAINTIFF, JOHN D. MILLER.
5. DEFENDANT, EDWARD D. FIENBERG, M.D. be held responsible and liable for his negligent actions and omissions as they relate to the procedures performed on or about July 15, and August 21, 2007, on PLAINTIFF, JOHN D. MILLER.
6. DEFENDANT, EDNAN AHMED, M.D. be held responsible and liable for his negligent actions and omissions as they relate to the procedure performed on or about July 15, 2008, on PLAINTIFF, JOHN D. MILLER.
7. PLAINTIFF, JOHN D. MILLER be granted a trial before the Court.
8. PLAINTIFF, JOHN D. MILLER be awarded a monetary amount for his damages not to exceed the jurisdictional limits of this Court.
9. PLAINTIFF, JOHN D. MILLER be awarded a monetary amount for his pain and suffering to be determined by this Court.
10. PLAINTIFF, JOHN D. MILLER be awarded any and all other causes that this Court may find just and deserving.

Respectfully Submitted
John D. Miller Pro Se
14 weeks
New York
PAGE 6
N.Y. 12/15

PLAINTIFF'S ORIGINAL PETITION

26089

James M. Sullivan

11-07-2011 IS

DATE OF CLAIMANTS
FIRST MAILING OF THE
COMPLAINT SF 95 TO
OFFICE OF COUNSEL GEN.

11-16-09

REPRESENTS

THE DATE
WHEN CLAIMANT
FIRST KNEW
OF THE
MALPRACTICE

Dr. Mark A. Birrell & Associates
Optometrists

17 Springfield Road
Westfield, MA 01085
(413) 572-0003

555 Hubbard Avenue
Pittsfield, MA 01201
(413) 442-2848

Patient Name John Miller Date 11-16-09

Address _____ Age _____

Rx

OD - Balance
OS - 350-100 X 100

Refills: _____

Signature: _____

MA Registration Number.

3653

Policy
Interchange is mandated unless the practitioner
writes the words "no substitution" in this space.

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PS Form 3800, August 2006 See Reverse for Instructions

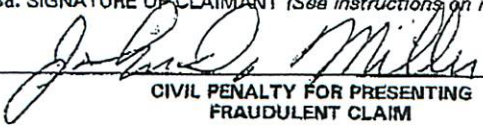
John Miller

16 LOUERS LN.

NEW GIBRANON N.Y.

Tel 518-653-0665

12/25

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: OFFICE OF THE General Counsel 633 INDIANA AVE, NW WASHINGTON, D.C. 20004		2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code) John D. Miller 16 LOVERS LANE NEW LEBANON, NY 12125			
3. TYPE OF EMPLOYMENT <input checked="" type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 02 06 40	5. MARITAL STATUS SINGLE	6. DATE AND DAY OF ACCIDENT		7. TIME (A.M. or P.M.)
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) BLINDNESS INCURRED DURING 47 OPERATIONS OF THE RIGHT EYE AT LA. HOSPITAL JAMICA PLAINS, MASS 16 OCT 2006 21 AUG 2007 11 SEPT 2007 15 JULY 2008					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. BLINDNESS OF THE RIGHT EYE. DIAGNOSED 16 NOV 2009 MARK BORRELL & ASSOC. 141 SPAINFORD ROAD WESTFIELD, MASS 01085					
11. WITNESSES					
NAME		ADDRESS (Number, street, city, State, and Zip Code)			
12. (See instructions on reverse) AMOUNT OF CLAIM (In dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY \$100,000	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$100,000		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) 			13b. Phone number of signatory 518-653-5521		14. DATE OF CLAIM 7 NOV 2011
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000 plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

95-109
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NSN 7540-00-634-4046

STANDARD FORM 95 (Rev. 7-85) (EG)
 PRESCRIBED BY DEPT. OF JUSTICE
 28 CFR 14.2

PATIENT EXAMINATION FORM

NAME: John Miller AGE: 69 SEX: M DATE: 11/16/09

CHIEF COMPLAINT: all had cataracts

HISTORY: Severe Retinal PSYCH: Mood Affect (anxiety/depression) ☐ ni NEURO: Oriented (person/time/place) ☐ y ☐ n

IPI: Buckle + silicone Buckle Allergies: _____

Location: at apt - abn - ad Medications: _____

Quality: cataract (ES) - macular degeneration

Severity: #1 CC - glare Ocular ROS: _____

Duration: _____ Medical History & ROS from _____ reviewed: ☐ no changes

Timing: _____ Dr. Initials: _____

Context: _____

Modifiers: _____

UNADDED	OD 20/	20/	CURRENT	DATE	OD 20/	20/	NEAR	BC
DIST	OS 20/	20/	RX	<u>100-15X90</u>	OD 20/	20/	NEAR	ADD
VA	OS 20/	20/			OS 20/	20/		TYPE

COVERS: Penicillin COVER: _____

NP: _____ PINHOLE VA: _____

PD: _____ OD 20/ _____

OS 20/ _____

KER: _____

OD _____

OS _____

COLOR VISION: WNL STEREO FUSION: WNL

OD: WNL EOM: WNL BP: _____

OS: WNL FIELD: WNL CONFRONTATION: WNL

SCREEN: WNL AMSLER: WNL PERIMETRY: WNL

PHOROMETRY: _____

RETINO: OD 20/ DIST: OD 20/

OR: OS 20/ SUBJ: OS 20/

UTOREFR: OS 20/ AMP: bed PRA: 40-

NEAR: OD 20/ ASSOC PHORIA: _____

SUBJ: OS 20/ LAT: _____

VERT: _____

EXTERNAL (BIOMICROSCOPY)

ANGLE EST (GRADE)	OD	1	2	3	4
OS	1	2	3	4	

TEARS: _____

DISCHARGES: _____

CORNEA: _____

CONJ: _____

BULB CONJ: _____

ANT CHMB: _____

LENS: _____

IRIS: _____

TONOMETRY

ASSESSMENT

1 S/P RD OD & CORNEA

2 Myopia

INTERNAL (OPHTHALMOSCOPY)

DO	90	20
BLO	78	MIO

C/D: _____

DISC MARGINS: OK

MACULA: OK

VESSELS: _____

BACKGROUND: _____

MEDIA: _____

VITREOUS: _____

PERIPH RET: _____

DPA	SE Explained			
Tropic	.25%	.5%	1%	
Phenyl	2.5%	5%	10%	
Parad	1%			
Cyclo	.5%	1%	1%	

Rx Recommendations

	Sphere	Cyl	Axis	Prism	Base	Add
OD						
OS						

CL/RX	B.C.	Power	Dia.	PC/C	Type of CI
OD					
OS					

Device: Rx adaptation PC Lenses Far time Rx Dist Rx Reading Rx

Rx optional for dist Rx optional for near

Recommendations: SAF Rx Computer Rx Golf Rx Safety Rx Sports Rx

Recall: Date: _____ Reason: (E)xam (C)LCheck (G)aucomaPC (T)onometry (Y)outhRxCheck (D) FE

